

**SENATE APPROPRIATIONS COMMITTEE
FISCAL NOTE**

BILL NO. House Bill 1307

PRINTER'S NO. 3771

AMOUNT

\$6,000,000

FUND

General Fund

DATE INTRODUCED

April 7, 2011

PRIME SPONSOR

Representative Milne

HISTORY OF BILL

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Reported as amended, April 13, 2011
First consideration, April 13, 2011
Laid on the table, April 13, 2011
Removed from table, June 13, 2011
Laid on the table, June 13, 2011
Removed from table, June 21, 2011
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Re-reported as committed, June 24, 2011
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In the Senate
Referred to EDUCATION, June 26, 2011
Reported as amended, May 22, 2012
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Re-reported as amended, June 18, 2012

DESCRIPTION AND PURPOSE OF BILL

House Bill 1307 establishes a new Article (VI-A) School District Financial Recovery and makes other changes to the Public School Code related to requirements to maintain elementary schools, superintendent contracts, intermediate unit reporting, employee pools and wearing military uniforms at graduation.

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Elementary Schools (Section 501) – Allows a school district to satisfy the requirement contained in Section 501 that it must maintain an elementary school by operating a school building; converting a building to a charter school; contracting with an education management services provider to operate a school building; or, paying tuition for students to attend school in another school district upon the agreement of both school districts.

School District Financial Recovery (Article VI-A) – Early Warning System/Fiscal Watch Status – Requires the Department of Education develop and implement an early warning system to compile and analyze information on the financial condition of school districts to determine whether a school district should be placed in financial watch status. Requires the department establish guidelines for the operation of the early warning system including a description of variables used to identify school districts in financial watch status. Requires the department to notify a school district when it has been identified for financial watch status. Provides the department shall request all information necessary from a school district placed in financial watch status to conduct a thorough review of its financial condition and provide technical assistance appropriate to remedy its financial difficulties. Provides the department may employ or contract with consultants to develop the early warning system and assist the school districts in financial watch status.

Declaration of Financial Recovery Status – Requires the Secretary of Education to issue a declaration of distress if the following applies: (1) the school district has an average daily membership greater than 7,500 and receives an advance of its basic education funding at any time; or, (2) the school district receives an advance of its basic education funding at any time and is either subject to a declaration of fiscal distress or engaged in litigation against the Commonwealth in which it is seeking financial assistance. At present, Harrisburg School District and York City School District fall into the first category, which qualifies them as moderate financial recovery school districts and Chester-Upland School District and Duquesne School District fall into the second category, which qualifies them as severe financial recovery school districts.

Provides that not more than nine school districts may be under a declaration of financial recovery or in receivership at any time. Provides that the Secretary may decline to issue a declaration of financial recovery, if within the last five years, the school district has faced an emergency caused by similar circumstances.

Requires the State Board of Education to promulgate regulations within two years establishing criteria which the Secretary may consider in determining whether to issue a declaration of financial recovery status and whether a school district shall be deemed a moderate financial recovery school district or a severe financial recovery school district. Provides criteria the Secretary may consider when determining whether to issue a declaration of financial recovery status. Requires the State Board to convene and consult with a Statewide Advisory Committee composed of a school superintendent, a school board member, a school business official, a representative of the department and a representative of the Office of the Budget in promulgating the regulations. Provides a school district may not be placed in financial recovery status as a result of the state's failure to make payment of moneys due and that a declaration of financial recovery status is appealable.

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Commitment to Ensure Effective Education Services – Includes language ensuring the Commonwealth will delivery effective educational services to students enrolled in a school district in financial recovery status.

Chief Recovery Officer – Requires the Secretary of Education to appoint the Chief Recovery Officer (CRO) not later than five days after the declaration of fiscal recovery. Requires a CRO have specific experience related to financial management. Provides, except for the current business manager or financial officer, the CRO may not be an elected or appointed official of the financial recovery school district and may not run for elected office in the school district or a conterminous political subdivision. Provides contracts for the services of a CRO shall not be subject to contractual competitive bidding requirements. Provides for the department to pay the CRO’s salary and expenses.

Provides the CRO with the following powers and duties: (1) develop, implement and administer the financial recovery plan for the school district; (2) maintain oversight over the school district during the period of financial recovery; (2) coordinate the department’s provision of technical assistance; (3) attend regular and executive sessions of the school board; (4) serve as an advisor to a receiver when necessary; (5) meet at least monthly with the advisory committee; and, (6) conduct public hearings on the basis for financial recovery declaration and the development and implementation of the financial recovery plan. Provides the CRO full access to all financial records of the financial recovery school district. Allows the CRO to petition the Court of Common Pleas for a writ of mandamus to compel school officials to furnish records if necessary. Allows the CRO to hold public meetings in connection with the preparation of the financial recovery plan and private meetings with individual creditors in an effort to obtain the consent to adjust claims. Requires meetings with the advisory committee to be public meetings

Financial Recovery Plan – Requires the financial recovery plan developed by the CRO for the financial recovery school district to provide the following: (1) effective educational services; (2) payment of lawful obligations; (3) timely payments to the Public School Employees’ Retirement Fund; (4) a plan for the school district’s return to financial stability; (5) a cash flow analysis for the school district; (6) state projections of revenues and expenditures; (7) state benchmarks and timelines for restoring financial stability; (8) use of financial data software provided at the department’s expense; and (9) criteria the school district must satisfy before the Secretary may terminate the financial recovery status.

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The plan may also include recommendations for the following if appropriate: (1) satisfying judgment and past due accounts; (2) eliminating deficits; (3) restoring special fund accounts; (4) balancing the budget; (5) avoiding future financial difficulties; (6) enhancing the school district's ability to negotiate new financing terms; (7) considering changes in accounting and automation procedures; (8) proposing a reduction of debt due on specific claims; (9) changes in staffing levels, organization and school district policy; (10) specific audits and further studies; (11) sale, lease, conveyance, assignment or other use of assets; (12) application for a loan from the Financial Recovery Transitional Loan Fund; (13) an analysis of whether consolidation or privatization of existing school district services is appropriate and recommendations to accomplish such changes; (14) a capital budget which addresses infrastructure deficiencies; (15) greater use of intermediate unit programs; and (16) anticipated cost saving related to new tools provided for the school districts.

Tools for Financial Recovery School Districts – Provides a school district in financial recovery status or under receivership may exercise the following powers and duties to the extent they are included in its financial recovery plan and will effect needed economies in the operation: (1) reopen its budget; (2) convert school buildings to charter schools provided the conversion will result in financial savings; (3) allow charter schools established through this process to not be subject to provisions of law requiring employees to be enrolled in the Public School Employees Retirement System and be provided health care benefits equivalent to the local school district; (4) cancel or renegotiate contracts other than collective bargaining agreements; (5) increase tax levies within the constraints of the Taxpayer Relief Act; (6) appoint a special tax collector of delinquent taxes; (7) dispense with services of unneeded nonprofessional employees; (8) enter into agreements with persons or organizations to operate schools; (9) suspend or revoke a charter; (10) employ professional and senior management level employees who do not hold certification if the Secretary has approved their qualifications; (11) close or reconstitute a school including the reassignment, suspension or dismissal of professional employees; (12) Enter into agreements with persons or organizations providing noninstructional services, provided a three year cost comparison shows the agreement will result in saving; (13) appoint managers, administrators or for-profit organizations to oversee the operation of a school or group of schools; (14) reallocate resources, develop achievement plans and implement testing and evaluation procedures; (15) supervise teachers and administrators; (16) negotiate a new collective bargaining agreement if the negotiation will effect needed economies in the operation of the school district; (17) delegate the powers of the CRO; (17); employ, contract with or assign persons to review the financial and educational programs and make recommendations for improvements; and (18) negotiate contracts with charter schools.

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Process for Moderate Financial Recovery School Districts – Requires the CRO, within 90 days of being appointed to develop a financial recovery plan and provide copies to school district officials. Upon receipt of the plan, the school district shall make it available in its business office and post it on its publically accessible Internet website. Requires the board of school directors to approve or disapprove the plan by a majority vote at a public meeting within 30 days. If the plan is approved by the school board, the CRO is required to forward it to the Secretary for approval within 5 days. Requires the Secretary to approve or disapprove the plan in a written statement within 10 days. If the Secretary disapproves the plan, the CRO is required to make revisions within 20 days. If the plan is not approved by the school board within 365 days of the declaration of financial recovery status, the Secretary is required to petition the court of common pleas for the appointment of a receiver.

Process for Severe Financial Recovery School Districts – Requires the school board within 14 days adopt a resolution to proceed by either: (1) cooperating with a CRO in the development, approval and implementation of a financial recovery plan; or, (2) appointing a receiver. Failure to vote shall be deemed a vote to proceed with the appointment of a receiver. Requires the Secretary to petition the court for the appointment of a receiver when the school board votes to proceed to appoint a receiver or does not hold a vote.

For a school district that votes to cooperate with a CRO, it requires the CRO, within 30 days of being appointed, to develop a financial recovery plan and provide copies to school district officials. Upon receipt of the plan, the school district shall make it available in its business office and post it on its publically accessible Internet website. Requires the school board to approve or disapprove the plan by a majority vote at a public meeting within 10 days. If the plan is approved by the school board, the CRO is required to forward it to the Secretary for approval within 5 days. Requires the Secretary to approve or disapprove the plan in a written statement within 10 days. If the Secretary disapproves the plan, the CRO is required to make revisions. If the plan is not approved by the school board the Secretary is required to petition the court of common pleas for the appointment of a receiver within 5 days.

Receivership – Requires the Secretary to petition the court of common pleas for the appointment of a receiver if a school district fails to approve a financial recovery plan, fails to implement a plan, fails to achieve the criteria set forth in the plan or votes to proceed with the appointment of a receiver. Requires the petition for receivership submitted to the court to include a copy of the plan. Requires the court to conduct a hearing within seven days of the filing of the petition for receivership. Requires the court to issue an order granting the receivership unless it finds evidence that the petition is arbitrary, capricious or irrelevant to restoring the school district to financial stability. Requires an order issued granting receivership to declare the school district to be in receivership for a period of three years, state the criteria upon which the order is granted and state findings of fact to support the order, and direct the receiver to implement the financial recovery plan. Allows the court to reject the receiver named in the Secretary's petition and name a receiver or order the Secretary to submit an alternate appointment.

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Requires a receiver have specific experience related to financial management. Provides that the receiver may not be an elected or appointed official of the financial recovery school district and may not run for elected office in the school district or a conterminous political subdivision. Provides for the CRO to remain in place as an advisor to the receiver. Provides the CRO may be appointed the receiver. Provides for the department to pay the CRO's salary and expenses. Provides the receiver with sovereign and official immunity.

Provides when a receiver is appointed the receiver assumes all powers and duties of the school board, including those stated in the financial recovery plan, except for the power to levy and raise taxes. Provides the receiver with the following powers and duties: (1) to implement the financial recovery plan; (2) submit quarterly reports to the Secretary and school officials; (3) direct employees and officials concerning progress under the financial recovery plan; (4) direct employees and officials to take actions as necessary to implement the plan; (5) direct the school board to levy and raise taxes; (6) modify the financial recovery plan as necessary by petitioning the court; (7) employ financial and legal experts to help develop and implement the plan; (8) attend regular and executive sessions of the school board; (9) petition the court for a writ of mandamus directing school officials to comply with a directive.

Termination of Financial Recovery Status – Requires the Secretary to issue a written declaration terminating financial recovery status. Requires the Secretary to consider the following when making the determination: (1) whether the school district has met and is continuing to meet the criteria established in the fiscal recovery plan; and (2) whether the monthly reports submitted by the CRO concerning the school district progress indicate terminating financial recovery status is appropriate. The Secretary's declaration must include the effective date of the termination and a statement of facts upon which the determination to terminate was made. Also provides a school district may petition the Secretary for termination of financial recovery status.

Provides when financial recovery status is terminated the school board resumes full control of the school district. Requires the CRO and the department continue to provide oversight for five years to ensure financial stability is maintained. Requires the CRO and the department to continue to provide oversight for a school district in which any political subdivision is a financially distressed municipality without regard to whether the school district continues to maintain the objectives in the financial recovery plan. Requires the Secretary to petition the court of common pleas for a receiver if during the transition period the school board fails to maintain the objectives stated in the financial recovery plan.

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Termination of Receivership – Requires the receivership to terminate three years after the appointment of the receiver unless the Secretary petitions the court for an extension. Provides when the receivership expires the school board resumes full control of the school district. Requires the CRO and the department continue to provide oversight for five years to ensure financial stability is maintained. Requires the CRO and the department to continue to provide oversight for a school district in which any political subdivision is a financially distressed municipality without regard to whether the school district continues to maintain the objectives in the financial recovery plan. Provides that if during the transition period after the expiration of the receivership the school board fails to maintain the objectives stated in the financial recovery plan the school district shall be subject to a declaration of financial recovery status.

Financial Recovery Transitional Loan Program – Establishes the Financial Recovery Transitional Loan Program in the Department of Education to provide loans to school districts in financial recovery status that have approved a financial recovery plan. A school district's financial recovery plan constitutes the application for the loan and the Secretary's approval of the plan constitutes the approval of the loan. Requires loans to be free from interest and be repayable based on a predetermined schedule. Provides loans are to be paid from moneys in a restricted account established in the department. Provides the account may be funded by annual appropriations for the program, principal payments on loans made under the program, interest earned and other funds not encumbered or not committed from appropriations for grants and subsidies made to the department to assist school districts for the prior year which are authorized for use by the General Assembly on an annual basis. Provides any loan may be suspended, if in the judgment of the Secretary, the school district fails to take all actions necessary to implement the financial recovery plan. A school district that receives a loan may enter into a voluntary contract with a charter school in which school district students are enrolled to assist with repayment of the loan. Requires loans to be used to implement provisions of the financial recovery plan. Provides loans are not subject to and are subordinate to indebtedness incurred under the Local Government Unit Debt Act. Provides that total amount of loans may not exceed the amount contained in the fund, a school district may only receive one loan per year and nonpayment of a loan will not subject the school district to withholding of subsidies by the department.

Other Provisions – Provides for school directors in a financial recovery school district to remain in office and not resign without the approval of the CRO or receiver. Provides for the school board in a financial recovery school district to appoint an advisory committee to be established to meet and consult with the CRO in development of the financial recovery plan. Provides a school district may not file for bankruptcy.

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Intermediate Unit Reporting (Sections 907-A and 921-A)

Requires the Department of Education post intermediate unit reports on subsidies and funds received and annual financial reports on its publically accessible Internet website by March 1, each year.

Superintendent Contracts (Sections 1073, 1073.1, 1076, 1077, 1078, 1780 & 2104)

Requires superintendent contracts be subject to the Right-to-Know Law. Requires the contracts specify the following information: (1) mutual and complete agreement between the parties with respect to the terms and conditions of employment; (2) the duties, responsibilities and performance expectations, including standards and assessment; (3) provisions related to compensation; (4) term of the contract, including language stating that it will terminate immediately upon expiration unless allowed to renew automatically; (5) provisions related to termination, buyout, severance and post employment; (6) provisions related to the scope of outside work that may be performed; (7) a provision requiring all modifications be made in writing; (8) a provision stating the contract shall be governed by the laws of this Commonwealth; (9) provisions limiting compensation for unused sick leave and the transfer of sick leave from previous employment to not more than 30 days; and, (10) provisions related to post retirement benefits and the period of time they are to be provided. Limits compensation under severance agreements and requires a contract to include objective performance standards which are mutually agreed upon. Provides for the termination of contracts and requires school boards to publically disclose, at the next regularly scheduled meeting, the cause or reason for the termination of the contract.

Employees Pools (Section 1607(B.1))

Provides professional and temporary employees in a school district where students have been reassigned to another school district shall be offered employment by any school district receiving students who have been reassigned whenever that school district has a vacancy that the employee is certified to fill. Prohibits the school district from hiring any new employee until the position has been offered, in order of seniority to all members of the pool. Employees hired from the pool are to be credited with all accumulated sick leave and years of service for the purpose of salary schedule placement. It also provides the employees shall be credited for years of services for the purposes of sabbatical leave eligibility, suspension and realignment rights and any retirement incentives or severance payments. The employee pool established in this section will apply to employees in Duquesne School District.

Wearing Military Uniforms at Graduation (Section 1616)

Provides a student shall have the right to wear a dress uniform issued to the student by a branch of the United States Armed Forces while participating in the graduation ceremony for the student's high school if the student meets the following requirements: (1) the student has fulfilled the requirements for receiving a high school diploma and is otherwise eligible to participate; and, (2) the student has completed basic training for and is an active member of a branch of the United States Armed Forces.

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The provisions making current provisions of law related to distressed school districts applicable to only the school district of the first class take effect in 180 days. The provisions related to superintendent contracts, intermediate unit reporting, wearing of military uniforms are scheduled to take effect in 60 days. The provisions related to school district financial recovery take effect immediately.

FISCAL IMPACT:

The enactment of House Bill 1307 is estimated to cost the Commonwealth \$6,000,000 in fiscal year 2012-2013 for costs related to school district financial recovery. This includes: (1) \$250,000 to develop and implement the early warning system to compile and analyze information on the financial condition of the Commonwealth's 500 school districts; (2) \$250,000 to provide school districts in financial watch status with technical assistance; (3) \$500,000 for personnel and administrative costs of the department; and, (4) \$5,000,000 to pay the salaries and necessary expenses of the chief recovery officers and receivers, legal fees, accounting costs, costs for other consultants and for financial data software systems for the school districts in financial recovery status. This assumes that Chester-Upland School District, Duquesne School District, Harrisburg School District, York City School District are the only school districts to be declared in financial recovery status. To the extent additional school districts are declared to be in financial recovery status costs will increase proportionately. Funding for the Financial Recovery Transitional Loan Program will be dependent on appropriations made by the General Assembly in the General Appropriations Act.

The provisions related to elementary schools, intermediate unit reporting, superintendent contracts, employee pools and wearing military uniforms at graduation ceremony will have no adverse fiscal impact on Commonwealth funds.